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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CONTEE, JOY KIMBERLY

ART UNIT PAPER NUMBER

2686

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,009

Applicant(s)

MYERS, STEVEN DUANE

Examiner

Joy K. Contee

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 9-13, 17 and 20-28 is/are rejected.
- 7) ☒ Claim(s) 3-5, 7, 8, 14-16, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1,2,6,10-13,17,20-28 have been considered but are moot in view of the new ground of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,6,10-13,17,21-24 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busuioc et al. (Busuioc), U.S. Patent No. 6,151,309, previously used, in view of Gupta et al. (Gupta), U.S. Patent Pub. No. 2002/0120713, newly discovered.

Regarding claims 1 and 12, Busuioc discloses a software product (and method) for qualifying communication devices for broadband wireless services, comprising:

qualification software (i.e., reads on intelligent software systems or agents) configured when executed by at least one processor to direct the at least one processor to identify requirements (i.e., bandwidth availability) of a broadband wireless service; and a software storage medium (i.e., inherently the software system or agent is stored

as it has a distributed architecture) configured to store the qualification software (col. 1, lines 47-55).

Busuioc fails to explicitly disclose execution of an application to determine configuration information for a first communication device (mobile), and perform a comparison of the configuration information to the requirements of the broadband wireless service to determine if the first communication device is qualified to receive the broadband wireless service.

In a similar field of endeavor, Gupta discloses execution of an application to determine configuration information for a first communication device (mobile), and perform a comparison of the configuration information to the requirements of the broadband wireless service to determine if the first communication device is qualified to receive the broadband wireless service (page 3, [0033]).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include software means determining whether or not broadband is available for the purpose of determining capabilities of a wireless device as to whether broadband service is installable on said device.

Regarding claims 2 and 13, Busuioc as modified by Gupta disclose the software product of claims 1 and 12, wherein a second communication device (i.e., reads on "another agents") is configured to execute the qualification software to:

identify the requirements of the broadband wireless service (see Busuoic col. 4, lines 7-13);

transmit the application to the first communication device (see Busuoc col. 4, lines 47-53);

receive the configuration information from the first communication device (see Busuoc col. 4, lines 7-13); and

perform the comparison to determine if the first communication device is qualified to receive the broadband wireless service (see Busuoc col. 3, line 60 to col. 4, line 13).

Regarding claims 6 and 17, Busuoc as modified by Gupta discloses the software product of claims 1 and 13 wherein a second communication device is configured to execute the qualification software to: identify the requirements of the broadband wireless service; and (see Busuoc col. 4, lines 7-13); transmit the application to the first communication device (see Busuoc col. 4, lines 47-53).

Regarding claims 10 and 21, Busuoc as modified by Gupta disclose the software product of claims 1 and 12, wherein the qualification software is further configured to direct the at least one processor to determine upgrades for the first communication device based on the comparison (see Busuoc col. 4, lines 7-13).

Regarding claims 11 and 22, Busuoc as modified by Gupta disclose the software product of claim 10 wherein the qualification software is further configured to direct the at least one processor to determine business information for businesses that provide the upgrades (see Busuoc col. 9, lines 3-17).

Regarding claim 23, Busuoc as modified by Gupta disclose a communication device qualification system, as applied in the other independent claims 1 and 12 and additionally discloses

an interface configured to receive the application from the processing system, transmit the application to the first communication device, receive the configuration information from the first communication device, and transfer the configuration information to the processing system (see Busuoc col.3, lines 52-59).

Regarding claim 24, Busuoc as modified by Gupta disclose the communication device qualification system of claim 23 wherein the processing system is further configured to generate results based on the comparison and wherein the interface is further configured to transmit the results, the configuration information, and the requirements to the first communication device for display by the first communication device (see Busuoc col. 9, lines 3-10).

Regarding claim 27, Busuoc as modified by Gupta discloses the communication device qualification system of claim 23 wherein the processing system is further configured to determine upgrades for the communication device based on the comparison (i.e., reads on based on range of offered services) (see Busuoc col. 9, lines 1-16).

Regarding claim 28, Busuoc as modified by Gupta discloses the communication device qualification system of claim 27 wherein the processing system is further configured to determine business information for businesses that provide the upgrades (see Busuoc col. 9, lines 1-16).

4. Claims 9, 20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busuoc and Gupta, in view of Mayo et al. (Mayo), U.S. Patent No. 6,529,936.

Regarding claims 9, 20 and 26, Busuioc as modified by Gupta discloses the software product of claims 1,12 and 24 but fails to disclose wherein the application comprises an applet.

In a similar field of endeavor, Mayo discloses wherein the application comprises an applet (col. 9, lines 1-5).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc and Kilp to include an applet user interface object for accessing an URL as is known in the art.

Regarding claim 25, Busuioc as modified by Gupta discloses the software product of claim 23, but fails to disclose wherein the first communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format.

In a similar field of endeavor, Mayo discloses wherein the first communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format(col. 4,lines 36-43).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc and Gupta to include configuration information in HTTP format for the purpose of implementing Internet technologies as is known in the art.

Allowable Subject Matter

5. Claims 3-5,7,8,14-16,18,19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gallery et al. U.S. Patent No. 6,643,495, discloses a communication system and device for use with both a broadband distribution network and a telephone network.

Farber, U.S. Patent No. 6,642,261, discloses a mobile for adaptation to a radio interface access method that is supported by a mobile radio telephone network and communication system.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K. Contee whose telephone number is 571.272.7906. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 571.272.7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2686

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC


JOY K. CONTEE
PATENT EXAMINER